

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

SOUTHERN BAKERIES, LLC

and

BAKERY, CONFECTIONARY, TOBACCO
WORKERS, AND GRAIN MILLERS UNION

Case 15-CA-174022

**RESPONDENT SOUTHERN BAKERIES LLC'S REPLY BRIEF IN SUPPORT OF
CROSS-EXCEPTION TO THE ADMINISTRATIVE LAW JUDGE'S DECISION ON
REMAND**

Respondent Southern Bakeries, LLC ("SBC"), by counsel, pursuant to Section 102.46 of the Board's Rules and Regulations, submits its reply brief in support of its cross-exception to the Decision on Remand of Administrative Law Judge Arthur J. Amchan (the "ALJ"), dated February 11, 2019.

ARGUMENT IN SUPPORT OF CROSS-EXCEPTION

The rule for consideration in this cross-exception is Group A, Rule 3, which prohibits employees from:

Using company time or resources for personal use unrelated to employment with the company without prior authorization. This includes leaving company property during paid breaks or leaving your assigned job or work area without permission.

(Second Consolidated Complaint ¶ 7(b)(i)).

This rule is lawful under *Boeing*. There is nothing in or about the rule that suggests to employees that they cannot engage in protected concerted activity.

Moreover, the rule is substantially justified, as it facilitates SBC's continuous production system by requiring employees to remain on the job and work, unless excused, to avoid unproductive downtime and production problems arising from failure to constantly participate in or monitor the process. (Tr.290:12-291:8, 292:11-293:7.)

In its response, the General Counsel defends the ALJ's finding that "[a] reasonable person would likely read the rule as prohibiting, for example, solicitation on behalf on [sic] a union during a paid break time in a break room." (Response at 2; see ALJ Remand Decision at 3.) Not so. If that were the case, the same "reasonable person" would interpret the rule as prohibiting him or her from having any "personal" discussions whatsoever during paid break time in the break room, because such conversations would be "unrelated to employment." As was often the case before *Boeing*, the Board attempts to afford far too little common sense to the "reasonable person." The General Counsel's position is reminiscent of the *Lutheran Heritage* "reasonably construe" standard – as indicated by its citation to *Hyundai Am. Shipping Agency, Inc.*, 357 NLRB 860, 872-73 (2011), which utilized *Lutheran Heritage* rather than the new *Boeing* balancing analysis. The other decisions cited by General Counsel pertaining to rules prohibiting solicitation and for obtaining authorization before releasing statements to the media, see Response, Footnotes 3 and 4, are entirely inapposite.

Group A, Rule 3 is lawful. It serves only a legitimate purpose of maintaining the continuous production process and protecting Company resources, including

preventing the theft of time and assuring the safety of employees and Company property. It should be upheld as lawful.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on May 13, 2019, a copy of the foregoing “Respondent Southern Bakeries LLC’s Reply Brief in Support of Cross-Exceptions to the Decision of the Administrative Law Judge’s Decision on Remand” was filed electronically with the National Labor Relations Board and has been served upon the following by email:

Gary Shinnars, Executive Secretary National Labor Relations Board Office of the Executive Secretary 1015 Hal Street SE Washington, DC 20570 Gary.shinnars@nrlrb.gov	M. Kathleen McKinney, Regional Director National Labor Relations Board Region 15 600 South Maestri Place, 7th Floor New Orleans, LA 70130-3408 Kathleen.mckinney@nrlrb.gov
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/s/ David L. Swider

David L. Swider